

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2011-02140

BETWEEN

**(1) CENTRAL BANK OF TRINIDAD AND TOBAGO
(2) COLONIAL LIFE INSURANCE COMPANY (TRINIDAD) LIMITED**

Claimants

AND

**(1) LAWRENCE DUPREY
(2) LOUIS ANDRE MONTEIL
(3) CL FINANCIAL LIMITED
(4) DALCO CAPITAL MANAGEMENT LIMITED
(5) STONE STREET CAPITAL LIMITED
(6) GITA SAKAL**

Defendants

BEFORE THE HONOURABLE MR. JUSTICE ROBIN N. MOHAMMED

Appearances:

Mr. B. St. Michael Hylton, Q.C. leading Mr. Ian Benjamin, Mr. Jagdeo Singh and Mr. Roger Kawalsingh instructed by Ms. Elena Araujo for the Claimants

Mr. Martin Daly, S.C., leading Mr. Jason Mootoo instructed by Ms. Sarah Sinanan for the 2nd and 5th Defendants

**DECISION ON 2ND AND 5TH DEFENDANTS' APPLICATION FOR
FURTHER AND BETTER PARTICULARS**

Introduction, Application and Procedural History

1. Before this Court is the 2nd and 5th Defendants' Notice of Application of the 31st July, 2014 seeking an Order pursuant to **Part 26.1(1) (w)** of the **Civil Proceedings Rules 1998 ("the CPR")** and/or the inherent jurisdiction of the Court for further and better particulars in relation to the Claimants' Re-Amended Statement of Case ("RASOC") filed on 28th March, 2013 and Reply filed on 8th July, 2014 to the 2nd and 5th Defendants' Amended Defence.
2. The 2nd and 5th Defendants (hereinafter referred to as "the Defendants") further seek an order that in default of the Claimants complying with the order for further and better particulars, that those portions of the RASOC and Reply in respect of which the Claimants have failed and/or refused to supply such further and better particulars as may be ordered, be struck out. They also seek the costs of this Application, such costs to be assessed pursuant to **Part 67.11** of the **CPR**.
3. In terms of relevant background to the above-mentioned Application, by letter dated the 16th June, 2014, instructing attorney-at-law for the Defendants wrote to instructing attorney-at-law for the Claimants advising that the Defendants were entitled to the further and better particulars set out in the said letter and requested that same be provided within 21 days of the date of same.
4. On the 16th June, 2014, the said instructing attorney-at-law for the Defendants wrote a further letter to attorney-at-law for the Claimants stating inter alia, that it appeared prudent for them (the Defendants) to provide the Claimants with advanced notice of the fact that they considered themselves entitled to further and better particulars on portions of the proposed Reply to which objection had not been taken. The letter also set out the further and better particulars sought and requested that upon a Reply being filed the Claimants treat the said request as a formal request for further and better particulars and provide their response thereto.
5. On the 18th June, 2014, this Court delivered its ruling in respect of the several applications made by the Claimants to file Replies to the various defences filed in this action. Thereafter, the Claimants filed their Reply to the Amended Defence of the Defendants on the 8th July, 2014.
6. By further letter dated the 16th July, 2014, instructing attorney-at-law for the Defendants wrote to instructing attorney-at-law for the Claimants requesting a response to her earlier letters. By letter dated the 21st July, 2014, attorney-at-law for the Claimants responded advising that the Claimants would not be supplying the particulars requested for certain reasons which shall be outlined further on in this judgment.

The 2nd And 5th Defendants' Request For Further And Better Particulars

7. As was stated above, the Defendants seek particulars in relation to both the RASOC and the Claimants' Reply to their Amended Defence. With respect to the RASOC, the request for particulars may be grouped into the following six categories:
- (i) Particulars in respect of instances where it is alleged that these Defendants or either of them "*caused*" or "*procured*" that certain things be done or "*caused*" or "*procured*" the 2nd named Claimant ("CLICO") to do certain things¹.
 - (ii) Particulars of instances in respect of which it is alleged that these Defendants or either of them "*knew*" of certain matters².
 - (iii) Particulars of instances in respect of which it is alleged that these Defendants or either of them "*should have known*" or "*ought to have known*" of certain matters³.
 - (iv) Particulars of instances where it is alleged that these Defendants or either of them "*knowingly received*" monies or assets in breach of certain duties which they or either of them allegedly owed to CLICO and/or instances where such monies or assets were allegedly subject to trusts in favour of CLICO⁴.
 - (v) Particulars of instances where it is alleged that these Defendants or either of them "*dishonestly assisted*" certain other defendants to this action in alleged breaches of duties owed by such defendants to CLICO and/or in alleged breaches of trust⁵.
 - (vi) Particulars of instances where it is alleged that the 2nd Defendant "*diverted*" monies from CLICO to CL Financial Limited who then paid it to the 2nd Defendant⁶.

¹ The requests falling into this category are made in connection with paragraphs 112,118,119,123(2),127,128D,129,130,131,133,137,138,197,202,206,209,210,211B,211C,211D,211E,218,218B,218 F of the RASOC.

² The requests falling into this category are made in connection with paragraphs 112,140,162O, 202,206 and 215 of the RASOC.

³ The requests falling into this category are made in connection with paragraphs 112,140,162O, 202 and 215 of the RASOC.

⁴ The requests falling into this category are made in connection with paragraphs 188,194, 201 and 218E of the RASOC.

⁵ The requests falling into this category are made in connection with paragraphs 185, 195,200,207,211B, 211C, 211D and 211E of the RASOC.

⁶ The request falling into this category is made in connection with paragraph 197 of the RASOC.

8. With respect to the Reply, the particulars which the Defendants have requested may be grouped into the following three categories:
- (i) Particulars in respect of allegations that these Defendants “*concealed*” and/or “*withheld*” and/or “*failed to disclose*” certain facts and information⁷.
 - (ii) Particulars in respect of the allegation that certain wrongdoing and fraud allegedly committed on the part of these Defendants “*could not have been discovered with reasonable diligence and without specially commissioned forensic and accounting investigations and/or the Commission of Inquiry into the affairs of CLICO*”⁸.
 - (iii) Particulars of instances in respect of which it is alleged that these Defendants or either of them “*knew*” they were in breach of certain duties⁹.

The 2nd And 5th Defendants’ Position

9. According to the 2nd and 5th Defendants, they are entitled to the particulars sought. They contend that the ability to require a party to provide further and better particulars of its case has long been recognised as a necessary feature of the civil litigation process. Applications for further and better particulars were routinely made under the Rules of the Supreme Court 1975 (“the Old Rules”) and were informed by an underlying philosophy of fairness which required that parties know what case they had to meet at trial, ensured that parties were not taken by surprise and enabled parties to know what evidence they ought to be prepared with and to prepare for trial.
10. The Defendants submit that the introduction of the CPR has not done away with or diminished the importance of further and better particulars of pleadings in the landscape of civil litigation in this jurisdiction. The facility to apply for such particulars exists and a Court is required to make such orders for supplying same as may be necessary with a view to ensuring the fairness and the efficient conduct of litigation.
11. The Defendants contend that the general position on the authorities has always been for further and better particulars to be ordered at relatively early stages of proceedings (i.e. after the close of pleadings) rather than to require parties to wait until after discovery or service of witness statements. They contend that the logic of this approach is evident as particulars narrow the issues, focus the parties on the evidence which is required, obviate parties having to deploy their resources in pursuing speculative lines of enquiry and/or

⁷ The requests under this category relate to paragraphs 2c. and 2e. of the Reply.

⁸ The request under this category is made in relation to paragraph 2a. of the Reply.

⁹ The request under this category is made in relation to paragraph 2e. of the Reply.

marshalling evidence in respect of matters which may not ultimately arise and of course, save time.

12. The Defendants further submit that it is well settled that objections to the provision of further and better particulars on the footing that the party applying for same may or even must know the true facts of the case are not valid because a party is entitled to know the nature of the case being made against him and to tie down the other side by his particulars. It cannot be right that the Defendants be left to guess or speculate in the preparation of their case for trial as to how the Claimants will ultimately contend certain allegations.
13. According to the Defendants, whether in relation to the RASOC or the Reply, the particulars sought are necessary at this stage and will:
 - (a) sort out those issues which ought not to be postponed to the trial of the action and/or some other stage and/or may be eliminated at a preliminary stage;
 - (b) allow these Defendants to properly and fairly know and understand the case which is being made against them;
 - (c) prevent these Defendants being taken by surprise at trial and allow them to properly prepare their cases;
 - (d) allow these Defendants to identify at an early stage the evidence which they will need to obtain for the purposes of a trial;
 - (e) help limit and define the issues to be tried in relation to these Defendants and as to which discovery is required;
 - (f) enable the case to proceed to trial more smoothly and efficiently;
 - (g) further the overriding objective and facilitate the case being dealt with justly; and
 - (h) ultimately lead to an overall saving of time and costs.
14. With respect to the Reply, the Defendants contend that the first group of particulars requested concerns allegations that these Defendants "*concealed*" and/or "*withheld*" and/or "*failed to disclose*" certain facts and information. The Defendants contend that these matters have been pleaded by the Claimants with a view to defeating a limitation defence raised by the Defendants in their Amended Defence. They submit that in the circumstances, they are plainly entitled to the particulars sought by them in relation to paragraphs 2c. and 2e. of the Reply. They further submit that the provision of these particulars is all the more necessary in circumstances where a limitation defence has been raised by them because once the particulars are provided these Defendants will be better placed to consider whether they can properly pursue such point as a preliminary matter or whether they ought to leave it for trial.

15. With respect to those particulars sought by the Defendants in respect of the allegation that certain wrongdoing and fraud allegedly committed on the part of these Defendants “*could not have been discovered with reasonable diligence and without specially commissioned forensic and accounting investigations and/or the Commission of Inquiry into the affairs of CLICO*”, the Defendants contend that these particulars go squarely to the issue of limitation and for the reasons stated above, the Claimants also ought to be required to provide same.
16. With respect to the particulars required of paragraph 2e. of the Reply in which the Claimants contend that these Defendants or either of them “*knew*” that they were in breach of certain duties, the Defendants submit that the particulars requested by them are particulars of “*knowledge*” and, particulars of this kind are routinely ordered and there is no or no proper basis for refusing same in the instant case.
17. The Defendants contend that the Claimants have advanced grounds for the failure to provide the particulars requested but these grounds are limited and relate to timing of providing the information these Defendants seek. However, the Defendants submit that the said grounds are inconsistent with the learning to be found in decided cases with respect to requests for further and better particulars and, in any event cannot amount to good reasons having regard to the purpose and object of the CPR and the furtherance of the overriding objective. They contend that the authorities clearly mandate that an order for particulars be made.
18. In the circumstances, the Defendants submit that having regard to the relevant facts and the applicable law, this Court ought to require the Claimants to provide these Defendants with the several particulars contained in the draft Order annexed to the Notice of Application and these Claimants ought to be ordered to pay the costs of the Notice of Application to these Defendants.

The Claimants’ Position

19. The Claimants oppose the 2nd and 5th Defendants’ Application for further and better particulars and seek the dismissal of same in accordance with the exercise of the Court’s case management powers under **Parts 25** and **26.1(1)(w)** of the **CPR**.¹⁰
20. According to the Claimants, the Defendants’ Application is misconceived as it is unnecessary, disproportionate and unreasonable. They contend further, that it is contrary to the overriding objective in that the parties will not save and will incur significant costs

¹⁰ In their written submissions on page 2 the Claimants referred to **Part 26 (1) (w)** of the CPR. It is presumed that this was in error and that what was intended to be referred to was **Part 26.1 (1)(w)** of the CPR.

without any commensurate benefit in terms of case management of the action among the parties.

21. The Claimants submit that the letters of correspondence requesting further and better particulars did not contain sufficient or any justification or explanation for the Defendants' alleged entitlement to the elaborate and extensive particulars sought. They further submit that the requests of the Defendants are really requests for *evidence* and will likely:
 - a. duplicate portions of the RASOC;
 - b. obscure the issues already joined by the pleadings before the Court;
 - c. delay the hearing and determination of these Defendant's threatened but unfiled striking out application;
 - d. duplicate existing and future disclosure of thousands of documents;
 - e. duplicate the evidential material;
 - f. further delay the trial of this claim; and therefore
 - g. prevent the efficient case management of the matter.
22. In their submissions, the Claimants treat in turn with the specific requests made by the 2nd and 5th Defendants. With respect to the requests which relate to allegations of knowledge of the Applicants, the Claimants contend that there are more than a dozen requests about "*knowledge*" which ask for an identification of all facts, documents and overt acts. They submit that the requests do not acknowledge the facts or overt acts already pleaded or the documents provided. The Claimants are of the view that the requests are unnecessary and duplicative of the facts and circumstances concerning the Applicants which have already been set out in the RASOC and responded to in the Amended Defence.
23. The Claimants state that other requests for further and better particulars relate to the *manner or means* in or by which something was done. They contend that the Applicants are plainly asking for *evidence* by these questions and that evidence is provided in the document disclosure/witness statement process and that parties cannot seek evidence under the guise of particulars. They state that the Applicants also seek details of the fiduciary duties or trusts that were breached, and the manner or means by which they allegedly breached them. According to the Claimants, the requests for such details are objectionable as compliance would simply require the Claimants to repeat particulars which they have already pleaded. They further contend that the request amounts to an invitation to prolixity, as it takes no account of the words "set out above" referring to the detail of the allegations of breaches of trust that precede the paragraph.
24. With respect to the Reply, the Claimants submit that the application in relation to same is bizarre. They state that the Applicants argued that the Claimants' draft Reply sought to provide new particulars or to repeat allegations already made. The Court agreed and

disallowed various paragraphs. They say that the same Defendants now complain that the Reply does not contain sufficient particulars.

25. The Claimants submit that in any event, the RASOC (and the Amended Defence where the Defendants' responses are to be found) and other paragraphs in the Reply provide the detailed context of the allegations of concealment and failure to discover wrongdoing. They submit that that context includes the regulatory framework, the lack of corporate governance and the forensic and accounting investigations. The Claimants contend that if granted, the Defendants' Application would have the effect of requiring the Claimants to repeat matters in the RASOC which was the very basis for excluding material from the proposed Reply.
26. According to the Claimants, in their response to the request for particulars they invited the Applicants to withdraw the requests and reconsider whether they were necessary after the completion of the discovery process and the exchange of witness statements. This suggestion, they say, was consistent with the CPR and proportionate in all the circumstances. However, in response they say that the Applicants have filed an Application that is premature, disproportionate and if granted, would result in significant delays and a substantial increase in costs.
27. The Claimants submit that in the circumstances, the Court should exercise its case management powers to progress the litigation in an efficient and timely manner by dismissing the Application.

Issue

28. The main issue which arises for determination is as follows:
 - (i) **Whether ordering the further and better particulars sought by the 2nd and 5th Defendants is appropriate at this stage of the proceedings, having regard to all the circumstances of this case?**

Law and Analysis

29. Unlike under the **Old Rules**, the CPR (New Rules) do not expressly provide for the making of an application for further and better particulars.
30. The **CPR** introduced a new approach to civil procedure in Trinidad and Tobago, and the conspicuous absence of an express right to apply for further and better particulars, coupled with the requirement of Part 8.6 which requires the Claimants to plead a short statement of all the facts relied upon and the provisions requiring the parties to provide at

least standard disclosure and exchange witness statements in advance of trial must be considered.

31. The Claimants submit that under the old regime, witness statements were not exchanged before trial and accordingly, the defendants could only ascertain the case they had to meet at trial from the pleadings. Detailed particulars were therefore necessary and appropriate. They contend that the **CPR** changed that system by requiring the parties to provide at least standard disclosure and exchange witness statements well in advance of trial. Thus, while under the old system a Claimant had to clarify allegedly deficient proceedings by way of further and better particulars, under the **CPR** standard disclosure and witness statements serve that purpose.

32. In the English Court of Appeal case of **McPhilemy v. Times Newspapers Ltd and Other [1999] 3 All ER 775**, a case decided after the introduction of the English CPR, Lord Woolf MR had this to say:

“The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party’s witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise.”

33. Lord Woolf MR was however careful to point out that-

“This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader. This is true both under the old rules and the new rules”.

34. In the Privy Council case of **Charmaine Bernard v. Ramesh Seebalack [2010] UKPC 15** in delivering the judgment of the Board on the 21st July, 2010 Sir John Dyson SCJ noted the aforementioned dicta of Lord Woolf in **McPhilemy** (set out at paragraph 32 above). Having quoted Lord Woolf, Sir John Dyson SCJ went on to issue somewhat of a cautionary note. He stated that-

“But a detailed witness statement cannot be used as a substitute for a short statement of all the facts relied on by the Claimant. The statement must be as short as the nature of the claim reasonably allows.”

Accordingly, insofar as the Claimants suggest that any “fleshing out” of the case may be done in the witness statements, provided the general nature of the case that the Defendant

has to meet is made clear, it appears, based on the dicta of Lord Woolf stated above, that this amounts to a correct statement of the law. Lord Woolf suggested that this would be the case in the *majority of proceedings*, advancing what may be said to be the *general position*. Implicit in this statement is the notion that, as always, there would be exceptions to the general rule. The question is whether the circumstances of the 2nd and 5th Defendants may be categorized as such an exception. For reasons stated below, I do not think so. In light of the above-stated position I hold that the pre-CPR cases are of limited assistance in relation to the application before the Court.

35. The Claimants' case as set out in the RASOC and Reply alleges the misuse by CLICO of substantial sums received from policyholders and investors. They allege that the funds were used for the purposes and benefit of the Applicants and other Defendants and not for CLICO's benefit or that of the policyholders or investors. They highlight general dealings and specific transactions which they allege are indicative of such misuse of funds and these dealings are alleged to amount to breaches of trust, breaches of fiduciary duties contrary to the common law, Companies Act and Insurance Act and dishonest assistance by these and other defendants. Particulars of these dealings are set out in the RASOC containing 167 pages. I am of the view that the Claimants have in fact set out the general nature of the case the Defendants have to meet. My conclusion is bolstered by the fact the Defendants were able to thereafter file a comprehensive Amended Defence to the RASOC consisting of some 98 pages, effectively denying that the dealings and transactions constitute the alleged breaches and denying any wrongful conduct on the part of the Applicants. As the Claimants point out in their submissions, this Defence consisted of some 189 cross-referenced paragraphs responsive to the allegations in the RASOC.

36. In support of their case, the Claimants refer to **Part 35** of the **CPR** which concerns requests for information. According to the Claimants, **Part 35.1** enables parties to make a request for information but only after the time for serving witness statements has expired. Indeed, **Rule 35.3** provides as follows-

“An application for an order compelling a reply to a request for information may not be made before the time for serving witness statements has expired nor less than 42 days before the date fixed for trial.”

37. **Part 35** of the **CPR** was considered by the Court of Appeal of Trinidad and Tobago in **Realtime Systems Ltd. v. Renraw Investments Ltd. and Others Civ. App. No. 238 of 2011.** The Court of Appeal found that in the circumstances of the case, the trial judge was wrong to strike out the claim form and statement of case pursuant to **Part 26.2** of the **CPR**. Jamadar J.A. was of the view that the judge fell into error in concluding that a request for “*particulars*” of the statement of case was premature “*at this stage*” since an order for enforcement of such a request could not have been made (relying on Part 35 CPR). Jamadar J.A. was of the view that the judge therefore deprived himself of an order

that was available to him to make which could have facilitated the management of the case so as to further the overriding objective of the CPR which is primarily “*to enable the court to deal with cases justly*”.

38. Jamadar J.A., stated that in his opinion, the judge having concluded that the statement of case inadequately set out all of the facts which ought to have been stated, ought first to have considered whether an appropriate order for “further and better particulars” of what was set out in the statement of case could have facilitated the disclosure of what was required to allow the appellant to continue pursuing its claim, and also to allow the respondent a fair opportunity to know the case it had to answer and be able to state all the facts necessary to admit, explain and/or dispute the claims made against it.
39. Considering **Part 35.3** of the **CPR** specifically, Jamadar J.A., noted that the provision circumscribes a *request* made by a *party*. It in no way restricts the power of the *Court* to order further and better particulars before witness statements are filed if it thinks it necessary in its management of the case and furthering the overriding objective.
40. In his judgment, Jamadar J.A., appeared to suggest that **Part 35** was akin to the previous power to order interrogatories under the Old Rules as opposed to the power to order further and better particulars.
41. The decision of the Court of Appeal in **Realtime** was thereafter appealed but was subsequently upheld by the Privy Council.
42. While agreeing with the decision reached by the Court of Appeal, the Board did not expressly approve or disapprove of Jamadar J.A.’s suggestion that **Part 35** of the **CPR** was in tune with the power to order interrogatories as opposed to further and better particulars. However, what they did state is that-

“It does not follow from Rule 35.3 that, if the pleadings are not satisfactory prior to the exchange of witness statements, nothing can be done about it”.
43. Echoing the sentiments of Jamadar J.A., in that regard, the Board found that **Rule 35.3** involves a *restriction* on the ability of a party to request information but that the said Rule says nothing about the Court’s powers. The Board was of the view that under **Part 26.1(1)(w)**, the Court may make orders of its own initiative. Mance L.J., stated that-

“There is no reason why the court, faced with an application to strike out, should not include that the justice of the particular case militates against this nuclear option, and that the appropriate course is to order the claimant to supply further details, or to serve an amended statement of case including such details, within a further specified period.”

44. There are some marked differences between the **Realtime** case and the instant application before this Court. The **Realtime** case concerned, *inter alia*, an application to strike out the claim form and statement of case. No such application has yet been filed in the instant matter. In **Realtime**, the trial judge appeared to be labouring under the misapprehension that he did not have the power to order further and better particulars should he have thought such necessary, in light of the provisions of Part 35. He did not appreciate that they were not restrictive of his powers in that regard.
45. Given that the Board did not expressly state that Jamadar J.A., was wrong to suggest that **Part 35** did not cover requests for further and better particulars but rather concerned the power to order interrogatories, this may be taken to be the position. However, even if this were not so and **Part 35** did indeed concern the power to seek further and better particulars, the fact remains that whichever way the Part is interpreted, it in no way affects or bears upon the *Court's* power to order that further and better particulars be supplied should it think it necessary in the circumstances of the case, even before the witness statements have been filed.
46. Accordingly, it is for this Court to determine whether it sees it fit to order that the further and better particulars requested by the 2nd and 5th Defendants ought to be supplied at this stage of the proceedings, having had regard to all the circumstances of the case. Should this Court so deem it appropriate, then it is open to it to make such orders under **Part 26.1(1)(w)** of the **CPR** which provides that “*the Court may take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective.*”
47. The overriding objective is set out in **Rule 1.1** of the **CPR**. **Rule 1.2(1)** provides that the court *must* seek to give effect to the overriding objective when it exercises any discretion given to it by the Rules [*emphasis mine*]. Therefore, in exercising any discretion under **Part 26.1(1)(w)** this Court is mandated to have regard to the overriding objective.
48. **Rule 1.1(1)** stipulates that “*the overriding objective of these Rules is to enable the court to deal with cases justly.*” According to **Rule 1.1(2)**, dealing justly with the case includes-
- a) *ensuring so far as is practicable, that the parties are on equal footing;*
 - b) *saving expense;*
 - c) *dealing with cases in ways which are proportionate to-*
 - (i) *the amount of money involved;*
 - (ii) *the importance of the case;*
 - (iii) *the complexity of the issues; and*
 - (iv) *the financial position of each party;*
 - d) *ensuring that it is dealt with expeditiously; and*

e) allotting to it an appropriate share of the courts resources, while taking into account the need to allot resources to other cases.

49. The aforementioned list of factors is not exhaustive and accordingly other relevant considerations may be taken into account as well. Bearing in mind the provisions of **Rule 1.1** of the **CPR**, I now turn to the facts of the matter before me.
50. In this matter, I note that the Defendants were able to file a comprehensive Amended Defence to the RASOC. This of course is not to say that further and better particulars providing additional details may not be necessary. However, clearly, what was contained in the RASOC and Reply was not so sparse so as to inhibit any sort of filing at all. This also highlights the difference between **Realtime** and the instant case. In **Realtime** the claimant's statement of case lacked necessary details of the ingredients of the claim. This is not the case in the instant claim as there has been criticism for too much detail. Applying the approach of Lord Woolf in **McPhilemy**, additional details sought may come from the disclosure of documents and witness statements. This is not a case where a trial date has been set and therefore requiring the Defendants to await the disclosure process and the contents of the witness statements would affect the timeline already set by the Court. It is also not the case that the failure to provide further and better particulars at this point would prevent the Defendants from knowing the details of the case they have to meet at trial, for as was said above, no trial date has been set. Should the Defendants await the disclosure process and filing of the witness statements and find that the requisite information is not contained therein, they still, should they think it necessary, have the option of filing the application for further information under **Part 35** and seeking to obtain same before they have to go to trial. There is ample time for them to obtain such information, if it is necessary, and adequately prepare their case coming to trial.
51. The particulars sought by the Defendants are quite extensive. To require the Claimants to provide same at this juncture will require them to go through a rigorous process now and incur expenditure, not to mention that it would undoubtedly result in some delay. This, in circumstances, where the information may well be supplied in any event by disclosure of documents and in the witness statements. Such an approach would result, in my view, in unnecessary expense, particularly in circumstances where the Defendants will suffer no real prejudice by being required to await the witness statements.
52. The Defendants have argued that they have raised a limitation defence in their Amended Defence and require further and better particulars pertaining to that point. Again, after having had sight of the Claimants' witness statements, they may, if necessary, seek further information relative to a determination as to whether they wish to deal with the issue as a preliminary point or leave it for trial. Similarly, they may seek also thereafter further and better particulars so as to decide whether they may wish to make a striking

out application or not. To require the Claimants to supply the further and better particulars sought now when they may in any event be contained in the witness statements, in circumstances where no trial date has been set and the Defendants have managed to file a Defence to the Claim, would in my view, not be dealing with the case justly, that is, in a manner that is proportionate, seeks to save expense and seeks to ensure that the matter is dealt with expeditiously.

53. In the UK case of **Stocker v. Stocker [2014] EWHC 2402 (QB)**, Judge Richard Parkes Q.C., considered an application for an order that the claimant should answer a number of requests made in a Part 18¹¹ Request and that the time for service of the defence should be extended until 14 days after the provision of the answers. In considering certain paragraphs of the requests, the learned judge noted that-

“They relate to matters which on any view are bound to be covered by the Claimant’s witness statement (see McPhilemy v. Times Newspapers Ltd. [1999] EMLR 751), and I can see no proper litigious purpose in forcing answers to these requests before that point in the action, nor would it be either proportionate or necessary”.

54. Another recent UK case involving Part 18 Request is **Lexi Holdings (In Administration) v Pannone & Partners [2010] EWHC 1416 (Ch)**. This was a hotly contested claim for damages in excess of £42 million arising out of the defendants’ (a solicitors’ firm) conduct of a retainer by the claimant in connection with its business of the provision of secured bridging loans. The claimant made very serious allegations of dishonesty on the part of the defendants alleging that solicitors made payments of the claimant’s money knowing that the instructions to make those payments were unauthorized. The Re-Amended Particulars of Claim (“RAPOC”) alleged that the defendants had both actual and constructive knowledge of the fact that the Managing Director of the claimant had no authority to instruct the defendants to make payments complained of in the claim resulting in the said Managing Director dishonestly misappropriating tens of millions of pounds from the claimant.

55. The application to the Court for further information followed a written request by the defendants for the claimants to provide further information relating to the RAPOC and Replies to an earlier request for information. The information sought consisted of some thirty-one questions, covering ten pages, many of which sought information for the first time about important re-amendments in the RAPOC which were permitted after a reasoned judgment delivered by the said court. The court observed that the defendants did not suggest that they required the information in order to plead a full defence, or to understand the ambit of their disclosure obligations. Rather, it was said that the defendants required the information for the purpose of completing work on their witness

¹¹ Part 18 (Further Information) of the UK CPR is the equivalent of Part 35 (Request for Information) of the T & T CPR

statements and in certain respects in order for them fully to understand the case which they have to meet.

56. Briggs J., in allowing some but disallowing the majority of the information sought in the application alluded to the fact that a *“full re-amended defence was served..... and disclosure has now been given, albeit after the present application was issued...”*. The Court held that *“The regime for further information introduced by Part 18 is based upon the tests of necessity and proportionality.”* Briggs J., went on to say that –

“The CPR thus takes a more restrictive approach to what used to be regarded as an entitlement to particulars under the RSC, for reasons explained by Lord Woolf MR in McPhilemy v. Times Newspapers Ltd [1999] 3 All ER 775 at 792 to 3.”

57. The facts in **Lexi** appear to be similar to those of the case before this Court but with one major difference, that is to say, that in **Lexi** the order was made *after the disclosure process* had been triggered.
58. I echo similar sentiments as those mentioned by Judge Richard Parkes QC and Briggs J., in **Stocker** and **Lexi** respectively and hold that the tests to be satisfied in any application for further and better particulars or requests for further information are **necessity** and **proportionality**. The information sought by the 2nd and 5th Defendants may well be derived during the disclosure process and/or contained in the witness statements and so at this point I do not think that ordering that same be supplied would be either proportionate or necessary.

DECISION

59. Having regard to the particular circumstances of this case, the Court does not think that further and better particulars at this stage of the proceedings are either necessary or proportionate. Accordingly, this Court finds that ordering further and better particulars would be premature at this stage, not because this Court has no power to grant same, but because the circumstances of this particular case do not warrant such an order as it would not be in keeping with the overriding objective of dealing with the matter justly.

ORDER

56. Having regard to all of the foregoing-
- (i) **This Court finds that in the circumstances of this case, an order requiring that the further and better particulars sought by the 2nd and 5th Defendants in their**

application of the 31st July, 2014 be supplied by the Claimants would be premature and that such an order would not be appropriate at this time.

- (ii) Having regard to paragraph (i) of this Order, the 2nd and 5th Defendants' Application of the 31st July, 2014 is dismissed.
- (iii) The 2nd and 5th Defendants shall pay the Claimants' costs relative to the said Application to be assessed pursuant to Part 67.11 CPR 1998 in default of agreement.

Dated this 28th day of January, 2015

Robin N. Mohammed
Judge